No. 9409

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

BANK OF TEHACHAPI (a corporation),
Appellant,

vs.

CUMMINGS RANCH, INC. (a corporation), a Bankrupt,
Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

APPELLANT'S REPLY BRIEF.

T. N. HARVEY,
C. W. JOHNSTON,
CLAUDE F. BAKER,
Haberfelde Building, Bakersfield, California,
Attorneys for Appellant.

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APPELLANT'S REPLY BRIEF.

ADDITIONAL STATEMENT OF THE CASE.

We believe that the statement of the case of appellant in its opening brief fully covers the matters involved, but since the appellee has criticized the statement of facts of the appellant, we believe it advisable to make an additional statement of facts ("Tr." as hereinafter designated in this brief refers to the printed transcript of record instead of the original certified transcript of record). The record shows:

1. Order dated March 2, 1939 (Tr. 4) reversing Conciliation Commissioner's orders, and the order further found that the appellee was indebted to the appel-

lant in a sum of money exceeding $30,000.00, said indebtedness being secured by chattel mortgage upon the cattle, and J. J. Lopez had a second lien upon the cattle in the sum of approximately $12,000.00, and required the Conciliation Commissioner to have a re-appraisement made of the property, fix rental, and other matters as set forth in said order.

2. That at hearing had on January 25, 1939 before Conciliation Commissioner, evidence was introduced on behalf of the appellee as to the value of both the real and personal property and thereupon appellant made motion for an order authorizing the bank to foreclose its mortgage, and a motion that the Conciliation Commissioner recommend to the judge of the above entitled Court to dismiss the bankruptcy petition. Both motions were denied and writ of review was taken by appellant (Tr. 9-14). Pages 12, 13 and 14 contain copies of the motions. The appeal was filed with the Conciliation Commissioner on April 5th.

3. Thereafter the Conciliation Commissioner made his order approving appraisal and fixing rental (Tr. 20) and appellant filed petition for writ of review on same with the Conciliation Commissioner on April 21st.

4. Judge Leon Yankwich on October 23, 1939, after hearing on September 11, 1939, made his order confirming and approving the order of the Conciliation Commissioner, excepting that he found $10,404 had been paid pursuant to his order. The writs of review of appellant were denied and exceptions were allowed.

5. After the two writs of review had been filed with the Conciliation Commissioner and on May 11, 1939, 200 head of cows and steers were sold (see Exhibit "A" attached to this brief). We are requesting the Conciliation Commissioner to forward a certified copy of the order for the Court's information.

The writs of review were taken upon the two motions (Tr. 13 and 14) and upon the Conciliation Commissioner's order (Tr. 20-24). Appellee complains that there is no transcript of the hearing before Judge Yankwich. There was no evidence introduced and consequently there would be no transcript. There were no exhibits introduced before the Conciliation Commissioner at the hearings upon which he fixed his appraisal and the evidence given upon which the Conciliation Commissioner based his appraisal and rental value was the same as in his order.

ARGUMENT.

There are five specifications of error which are set forth in our opening brief, but will be also hereinafter set forth for the purpose of convenience to the Court. They are as follows:

SPECIFICATIONS NOS. 1 AND 2.

Specification No. 1. The Court erred in its finding in the order dated October 23, 1939, signed by Judge Yankwich (Tr. 29) "in that the matter of Supervisor for the care of the cattle and the payment of $10,000.00 to the Bank of Tehachapi had been complied with"; in that there was no evidence before the

Court, no evidence having been taken by the Conciliation Commissioner as to whether or not a supervisor was necessary, and no cattle had been sold when review was taken by the Bank of Tehachapi.

Specification No. 2. The Court erred in its finding of fact in the following particulars, to-wit: That finding No. II "that sum of $10,404.00 was obtained from the sale of cattle" of the same order as mentioned in Specification No. 1, as no cattle were sold at the time writ of review was taken and no evidence of same was before the Court.

Exhibit "A" attached to this brief shows that the sale of the cattle was made on May 8th and the order was signed on May 11th, which was after both of the writs of review had been taken and should not have been included in the order of Judge Yankwich; and we do not believe that Judge Yankwich would have included the same in the order if he had known that the order confirming sale had not been made by the Conciliation Commissioner until after date of filing writs of review. If it is allowed to stand or be considered, then appellant should be allowed to comment upon the same.

The contention of appellee that this matter was not raised by appellant in the District Court is correct. The question here is not whether or not the question was raised by appellant in the District Court, but that there was included in the order of the district judge a condition which was not raised upon the hearing, and which happened after the writs of review were taken.

SPECIFICATIONS NOS. 3 AND 4.

The Court erred in finding No. 3 (Tr. 30), "that the sum of $6000.00 is the reasonable rental value for the property of the debtor company as it existed prior to the sale of said cattle". A portion of the argument upon these specifications is included in the argument under specifications 1 and 2, in that there was no sale of cattle at the time of the writs of review and consequently no evidence before the district judge as to the sale of the cattle, and the further specification that the rental value should be reduced as to that portion of the property upon which rental is fixed upon the property not owned by the bankrupt.

The order of the Conciliation Commissioner dated April 5, 1939 (Tr. 23), as to the rental value of property not owned by the debtor is as follows:

> "(12) That the rental value of Railroad Land now being used but not owned by debtor is $675.00; that the rental value of the camp and well on said premises is $125.00; and that the rental value of the McWilliams property rented but not owned by debtor is $384.00 making a total of $1184.00 rental for this land not owned."

The Bankruptcy Act provides that the bankrupt shall be permitted to retain possession of his property *and the property now being used but not owned by the debtor is not property of bankrupt within the meaning of* paragraph 2 of subsection (s) of Section 75 of the Bankruptcy Act, which provides as follows:

> "* * * during such three years the debtor shall be permitted to retain possession of all or any part of his property in the custody and under

the supervision and control of the Court, provided he pays a reasonable rental semi-annually for that part of the property of which he retains possession."

SPECIFICATION NO. 5.

Specification No. 5. The Court erred in its findings of fact and in its order and decree of October 23, 1939, in that it should have granted an order to the Bank of Tehachapi dismissing the bankruptcy petition of the bankrupt Cummings Ranch and granted an order allowing the Bank of Tehachapi to foreclose upon its chattel mortgage, and should have allowed the writs of review of the Bank of Tehachapi of April 4, 1939 and of April 9, 1939, for the reason that the bankrupt Cummings Ranch is so hopelessly insolvent that it is impossible for it to rehabilitate itself within a three-year period or within any other time.

Appellant's opening brief, pages 6 to 11 inclusive, sets forth evidence showing the insolvency of appellee and the fact that said appellee cannot rehabilitate itself within the three year period or any other time.

Since the hearing and since this appeal has been taken the Conciliation Commissioner has made an order finding in substance that the bankrupt was not the owner of the real property. A copy of the order is attached to this brief and marked Exhibit "B", and a certified copy has been requested from the Conciliation Commissioner to be sent to the above Court. We believe that under the citations in *Ridge v.*

Manker, 132 Fed. Rep. 599 (C. C. A. 8th Circuit), which is as follows:

> "An appellate court may avail itself of authentic evidence outside of the record before it of matters occurring since the decree of the trial court, when such course is necessary to prevent a miscarriage of justice, to avoid a useless circuity of proceedings, to preserve a jurisdiction lawfully acquired or to protect itself from imposition or further prosecution of litigation where the controversy between the parties has been settled or for other reasons has ceased to exist."

and under the case of *Kendall v. Ewert,* 259 U. S. 139 (66 L. Ed. 862), in which the Supreme Court held in substance that evidence tending to show a dismissal may be considered on appeal when it is presented to and urged upon the attention of the Federal Supreme Court in support of a motion to dismiss the appeal on grounds that the case had been dismissed after the appeal was taken, that appellant is entitled to present such fact to this Court so that the Court will be fully advised. Appellant certainly would be entitled to present the same if the appellee was entitled to an order in the District Court including matters heard by the Conciliation Commissioner after the writs of review were taken.

ADDITIONAL REFERENCES TO EVIDENCE.

Appellee has stated in his brief that the claims of appellant are not supported by the record and that some of the statements of appellant as to the evidence

are false, and we wish to take up each one of such references of appellee to the evidence, and call to the Court's attention the place where the evidnce can be found. (For convenience whenever appellee's reply brief is referred to it will be labeled "A" with the number of the page thereafter, and whenever reference is made to appellant's opening brief, it will be labeled "App." with the number of the page thereafter.)

A. Appellee (A-11) states that the livestock for the years 1927 and 1928 is approximately the same as in April 1939 and further states that we did not call the Court's attention to the same.

We called the Court's attention (App. 6-7) to the fact that in 1927 the cattle and livestock were approximately the same as in 1923, which showed 800 head of cattle, 50 head of horses and 200 hogs. The appraisement shows 759 head of cattle, including calves (Tr. 23) and 15 horses. At the first hearing appellee testified (Tr. 57) that there was on hand at that time, which was in November, 1938, 703 head. It is evident that there was a decrease.

B. Appellee (A-12) states that the statement on page 8 of appellant's openng brief that about $33,-688.00 was owing, is not supported by the evidence and is incorrect.

Judge Yankwich's order (Tr. 6) found that there was over $30,000.00 due to the Bank of Tehachapi and the transcript showed that there was $29,928.00 principal and interest due in November and October of 1938 (Tr. 65-66).

The $30,000.00 would have interest added thereto of approximately $2000.00. There are other items such as $400.00 for costs on bond, $100.00 advanced to bankrupt per order of Conciliation Commissioner to count cattle at the time of the sale, attorneys fees and other items which are part of the indebtedness, and which latter items we admit are not covered by the transcript, but it is immaterial whether it is $32,000.00, $30,000.00 or $34,000.00 that is due by the appellee to appellant. The appellant is going to suffer loss regardless of the amount.

C. Appellee states that there is no evidence in the record to show the taxes (A-13).

Reference is made (Tr. 36) to the testimony of Mr. Cummings, the president of appellee, in which he states in substance that the second payment of taxes had not been made and is delinquent in the sum of $225.00, which would make taxes approximately $450.00, and at page 50 of the transcript, the yearly statement shows taxes paid in the sum of $440.72.

D. Appellee states that it did not sell cattle for the year 1938 for the reasons set forth by Mr. Cummings (A-15).

We have not maintained that he sold any cattle during the year 1938, but we do maintain that during the five years prior to the filing of the bankruptcy petition, including 1938, which was the year the bankruptcy petition was filed, the average price received for the sale of cattle was not greater than $3300.00 per year. At the hearing Mr. Cummings, president

of the bankrupt, testified that there was on hand 703 head of cattle in the fall of 1938 (Tr. 57). He further stated that he did not sell any cattle during 1938, building the herd up, so that the increases during the year 1938 with no cattle sold during that period was approximately 100 less than called for by the chattel mortgage of appellant. *What became of the other cattle?*

E. Appellee (A-16) states that the statement made by appellant (App. 16) "that the financial condition of appellee has been steadily growing worse, excepting for the year when a creditor took a lesser amount in settlement of an indebtedness, and the further statement that the debts in 1928 increased and the assets in 1928 decreased, in comparison with 1927" are not supported by the record, but that the record reveals them to be false.

What the appellant said is as follows: "The statements of the Bankrupt as to its financial condition from 1923 to date show that it has been steadily growing worse, excepting as to one year where it obtained a compromise settlement with Mrs. Kelly when she took approximately $23,000.00 to settle the indebtedness due her of $37,000.00. The bankrupt's debts in 1923 were $45,000.00. The debts in 1927 were $68,000.00. The debts in 1928 increased and the assets decreased, and there has been since that date a steady increase in indebtedness and a steady decrease in assets" (App. 16). The year "1928" should have been the year "1927".

Appellee owed $45,250.00 in 1923 (Tr. 48);

Appellee owed $67,062.35 in 1927 (Tr. 49);

Appellee owed $65,180.12 in 1928 (Tr. 50).

Appellee owes now about $79,249.00 according to the items set forth on page 8 of appellant's opening brief. In 1923 and 1927 appellee had on hand 800 head of cattle, 200 hogs, and 50 head of horses. At the time of the appraisement appellee had on hand about 759 head of cattle and about fifteen horses.

We believe that the record shows that we are correct that *the financial condition of the appellee from 1923 to date has steadily been growing worse.* Mr. Cummings, president of appellee, testified (Tr. 39) regarding the Kelly loan as follows:

"Q. Now, when you borrowed the money from the Federal Land Bank, this Twenty Five Thousand Five Hundred Dollars, what did you do with the money you got from the Federal Land Bank?

A. I paid off the old note to Mrs. Kelly.

Q. And how much was her note?

A. A great deal more than that, I don't remember, but she was going to take that as payment for the amount we owed her."

The financial statement of appellee on December 21, 1928 (Tr. 50) showed indebtedness to J. W. Kelly of $37,330.12 and the statement of December 31, 1937 (Tr. 49) also shows the same amount. It is evident that we are again correct that there was due at least $37,000.00 to Mrs. Kelly and she took approximately $23,000.00 to settle the debt. The $23,000.00 is arrived at by deducting the approximate amount of stock that was required to be purchased from the Federal Land

Bank at the time of the loan, but it is immaterial to us whether the matter is considered as $23,000.00 or $25,000.00. It proves our contention that there was a scaling down of debts at that time. True, the record upon appeal does not show the year of the transaction but it was between 1928 and 1938 and there was a benefit obtained by appellee by the scaling down of the debt.

IMPOSSIBLE FOR APPELLEE TO REHABILITATE ITSELF.

This matter has been covered in appellant's opening brief. It shows that the appellee not considering the sale of cattle and not considering the fact that the real property has been taken out of the proceedings, was in such a hopelessly insolvent condition that it is impossible for it to rehabilitate itself, nor is it possible to pay the costs and expenses of operation, and interest, out of the rental required to be paid into the Court.

If the sale of the cattle is to be included in the order, then it merely reduces the debt to the appellant in the amount received from the sale of the cattle, and reduces the value of the cattle in the same amount of $10,404.00, which makes the balance of the cattle valued at $19,444.50. It reduces the rental value on the cattle from $2203.50 to $1698.50, by deducting 202 head times $2.50 rental value. The cost and expenses of operating the cattle would be the same. The only reduction would be upon the interest upon the amount paid to the bank.

If the Court considers "Exhibit B" which shows dismissal as far as the property is concerned, then, of course, there should be deducted the value of the real property from the assets and there should likewise be deducted the liability due to the Federal Land Bank, which would only leave on hand the personal property of $31,358.50, after deducting the sale price of the cattle of $10,404.00 which would make the value of the assets $20,954.50. The debts would be: Bank of Tehachapi, about $22,000.00, J. J. Lopez (Tr. 6) second mortgage, $12,000.00, Mrs. Charles Asher (Tr. 60), $6983.00, which would make the total debts $40,983.00. This does not include interest computed on Lopez debt and on the Mrs. Charles Asher debt. The debts are approximately twice the value of the remaining assets.

The argument by appellee on page 18 that the president of the bankrupt corporation testified that it was feasible to sell 150 head of cattle per year and that it was his intention to sell 108 head for a gross of eight to ten thousand dollars, and that the testimony of witnesses that the bankrupt should net $10.00 per head per year for the cattle, and that the ranch had a contract for $8000.00 a year for the timber, and that this proves that appellee can rehabilitate itself is ridiculous. We must go not only on present conditions but on past history and past performance of appellee. The record shows in Exhibit A to this brief that it was necessary to sell two hundred head of cattle instead of 108 to bring $10,000.00.

The statement of Russell Hill (Tr. 81-82 and 87) merely shows that the appellee should make $10.00

profit per head off of the cattle, but the appellee corporation has not done it and it further goes to show that there is no chance for rehabilitation. The contract for $8000.00 for the sale of timber (Tr. 76) in substance shows that a number of people have tried to operate the mill and have gone broke. Mr. Cummings further stated that "the contract calls for $8000.00 a year for the first two years; of course, this year I know we can't get that".

Conciliation Commissioner took the view and the appellee takes the view that once the petition has been filed by a farmer debtor, that the petition cannot be dismissed for a three year's period regardless of whether or not there is any reasonable probability for the farmer debtor to rehabilitate himself, and cites the case of *John Hancock Mutual Life Ins. Co. v. Bartels,* 84 L. Ed. 154, as holding that the proceedings could not be dismissed even if the debtor has no chance to rehabilitate itself.

The decision in the *Bartel* case did not overrule the decision of *Wright v. Mountain Trust Bank,* U. S. Sup. Ct. 300 U. S. 440, 81 L. Ed. 736, but merely held the same as the decision in the *Moser* case, Ninth Circuit, 95 Fed. (2d) 944, that a farmer debtor, if he could not obtain an extension or composition, is entitled to be adjudged a bankrupt under subsection (s) and that a dismissal is not in order until after he has had his property appraised and his exemption set aside to him by state law.

> "The facts are that the District Judge found that the debtor had not made any proposition which

could be construed as a good faith offer for extension or composition and that the debtor was not entitled to be adjudicated a bankrupt under subsection S."

John Hancock Mutual Life Ins. Co. v. Bartels, 84 L. Ed. 154, 155.

At page 157 of the decision, after the Court had discussed the fact that a person was entitled to be adjudicated under subsection (s), states:

"He was so adjudicated. Bartels then asked, also as provided in subsection (s), that his property be appraised, that his exemptions be set aside to him as provided by state law, and that he be allowed to retain possession of his property under the supervision of the court, *that is, subject to such orders as the court might make in accordance with the statute.* The court failed to take that action. Instead of having the property appraised, the court received conflicting testimony as to value, discussed the chances of the debtor's rehabilitation and dismissed the petition and all proceedings thereunder."

Further upon the same page, the Court continues:

"If the court finds it necessary to protect the creditors 'from loss by the estate' or 'to conserve the security', the court may order any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, to be sold at public or private sale, and the court, in addition to the prescribed rental may require payments to be made by the debtor on the principal of his debts in the manner set forth."

Further, at pages 157-158 of the decision, the Court states:

> "If, however, the debtor at any time fails to comply with the provisions of the section or with any orders of the court made thereunder, *or is unable to refinance himself within three years, the court may order the appointment of a trustee and direct the property to be sold or otherwise disposed of as provided in the act.*"
>
> "The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, *while protecting the interest of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims,* the priorities and liens of secured creditors being preserved. See Wright v. Vinton Mountain Trust Bank."

CONCLUSION.

If the real property is eliminated then but three creditors are left, the appellant; Lopez, with the second mortgage, and Mrs. Asher, as the Federal Land Bank's claim could not be considered. While Mrs. Asher is not a party of record to the appeal, nevertheless Mrs. Asher is represented by the attorneys for the appellant and she desires the proceedings dismissed in the same manner as the appellant.

There is nothing in the record to show that the appellee ever had an income as set forth in appellee's brief (p. 19) from $7750.00 to $17,000.00 per year, or any other sum in excess of an average of

$3500.00 in the last five years prior to the filing of the bankruptcy petition, *and that amount was the gross for the sale of cattle and not the net.* The evidence in the record shows that the order should be made authorizing the Bank of Tehachapi to foreclose under its chattel mortgage or take any other legal steps as provided under the chattel mortgage to enforce payment of the notes secured by the chattel mortgage, or that an order be made dismissing the bankruptcy petition.

Dated, Bakersfield, California,
May 1, 1940.

Respectfully submitted,
T. N. HARVEY,
C. W. JOHNSTON,
CLAUDE F. BAKER,
Attorneys for Appellant.

(Appendix Follows.)

Appendix.

EXHIBIT "A"

In the District Court of the United States, for the Southern District of California, Northern Division

No. 4927

In the Matter of
Cummings Ranch, Inc. (a corporation),
Bankrupt.

ORDER CONFIRMING SALE.

The petition of the above bankrupt for an order authorizing the sale of one hundred fifty (150) steers and fifty (50) head of dry cows to the Kern Valley Packing Company, a corporation, for the sum of $10,300.00, according to bid attached to the petition, came on regularly for hearing at four o'clock P. M. on Monday, May 8, 1939, and it appearing to the Court, and the Court finds that J. J. Lopez, who has a second lien upon the cattle being in the form of a chattel mortgage, consented to the sale, and consented that the proceeds from said cattle be paid to the Bank of Tehachapi, which bank had a first lien in the form of a chattel mortgage upon said cattle, and the Bank of Tehachapi having consented to said sale upon the terms and conditions mentioned in the petition, and it further appearing to the Court that the brand of the above bankrupt is CL, and that the bid of the Kern Valley Packing Company was that it could select any 150 steers, and any 50 dry cows, and the

president of the bankrupt being present in Court, and the bankrupt's attorney being present in Court, and the attorney for the Bank of Tehachapi being present; and it appearing to the Court that a better price cannot be obtained for said cattle, and no one appearing and offering to bid a greater sum for said cattle, and that said sum so bid is the fair and reasonable market value for said cattle, and no one appearing to object to said petition, and it further appearing from the petition that the bankrupt has agreed that a delivery of a certified copy of the order confirming sale to the purchaser upon the payment of the money to the Bank of Tehachapi should be a sufficient conveyance of the property so purchased, and the Court being fully advised,

It is therefore ordered, adjudged and decreed that the sale be, and the same is hereby confirmed, and that the Kern Valley Packing Company is hereby ordered to immediately pay to the undersigned Conciliation Commissioner the total sum of said bid, that is, the sum of ten thousand three hundred dollars ($10,300.00), and thereupon the said sum of $10,300.00 shall be paid to Harvey, Johnston & Baker, attorneys for the Bank of Tehachapi, and thereupon the said purchaser, Kern Valley Packing Company, shall be entitled to take possession of said cattle free and clear of liens of the Bank of Tehachapi and J. J. Lopez, and that the delivery of the certified copy of this order confirming sale to the purchaser is a sufficient conveyance of the property so purchased.

Dated, May 11, 1939.

Samuel Taylor,
Conciliation Commissioner.

EXHIBIT "B"

In the District Court of the United States
In and for the Southern District of California
Northern Division

No. 4927

In the Matter of
Cummings Ranch, Inc. (a corporation),
Bankrupt.

ORDER.

WHEREAS, The Federal Land Bank of Berkeley, a corporation, and the Federal Farm Mortgage Corporation, a corporation, filed herein on November 28, 1939 their Petition and Motion to Strike moving that the real property described in Paragraph II of said petition be, by order of this Court, stricken from the schedules filed herein by the above named debtor, and that it be adjudged that said real property is no part of the assets of the estate of said debtor and that this Court has no jurisdiction thereover, and

WHEREAS, said petition, pursuant to the previous order of this Court, came on regularly for hearing before me on the tenth day of February, 1940, the debtor appearing by its attorneys, William S. Marks and Samuel L. Kurland, and said petitioners appearing by one of their attorneys, M. G. Hoffman,

Now Therefore, the Court having considered said petition, the records and files in this cause and the matters adduced at said hearing and it appearing to the Court therefrom, and the Court finds:

(1) That on the first day of February, 1934, Edward G. Cummings, George A. Cummings, Clarence C. Cummings, Edward J. Cummings, Frank R. Cummings and Albert N. Cummings were the owners of the real property described in Paragraph II of said petition.

(2) That on said date said owners made, executed and delivered to The Federal Land Bank of Berkeley and to the Land Bank Commissioner, predecessor of the Federal Farm Mortgage Corporation, certain notes and deeds of trust; that The Federal Land Bank of Berkeley and the Federal Farm Mortgage Corporation are now secured creditors of said owners.

(3) That Frank R. Cummings conveyed his interest in said property to Edward G. Cummings and that Edward G. Cummings, George A. Cummings, Clarence C. Cummings, Edward J. Cummings, and Albert N. Cummings are now the owners of the real property described in Paragraph II of said petition.

(4) That the debtor corporation is not the owner of any vested interest in the property which is described in Paragraph II of said petition; that said real property is no part of the assets of the debtor's estate and that this Court has no jurisdiction thereover.

Now, Therefore, the Court being fully advised in the premises,

It Is Ordered that the real property described in Paragraph II of said petition be stricken and it is hereby stricken from the schedules of the above named debtor; that the property stricken from the schedules is described as follows:

Parcel A: All of fractional Section 3, East half of Northeast quarter, West half of Northwest quarter, Southeast quarter of Northwest quarter, Southwest quarter, Northeast quarter of Southeast quarter and South half of South half of Southeast quarter of fractional Section 4; all of fractional Section 5 except Lot 4 (otherwise known as Northwest quarter of Northwest quarter), North half of North half of Section 8; all of Section 9, West half of East half of Section 10, North half of Section 14, Northeast quarter, East half of Northwest quarter, Northwest quarter of Northwest quarter, North half of Southeast quarter and Northeast quarter of Southwest quarter of Section 16; all in Township 11 North, Range 16 West, San Bernardino Base and Meridian; all of Fractional Section 33, Township 12 North, Range 16 West, San Bernardino Base and Meridian; all of Fractional Section 31, Township 32 South, Range 32 East, Mount Diablo Base and Meridian, Kern County, California.

Parcel B: All of Lots 2 and 3, Southwest quarter of Northeast quarter, Northwest quarter of Southeast quarter of Fractional Section 4, Township 11 North, Range 16 West, San Bernardino Base and Meridian, Kern County, California.

Parcel C: North half of South half of Southeast quarter of fractional Section 4, Township 11 North, Range 16 West, San Bernardino Base and Meridian, Kern County, California.

PARCEL D: South half of North half of Section 8, Township 11 North, Range 16 West, San Bernardino Base and Meridian, Kern County, California.

PARCEL E: West half of West half of Section 10, Township 11 North, Range 16 West, San Bernardino Base and Meridian, Kern County, California.

The property herein described contains 5109 acres, more or less.

EXCEPTING THEREFROM the following: Beginning at the point of the Northwest corner of the Southwest quarter of Section 3, Township 11 North, Range 16 West, San Bernardino Base and Meridian; thence East 209.71 feet; thence South 208.71 feet; thence West 208.71 feet; thence North to the point of beginning containing 1 acre, more or less.

Dated this 1st day of March, 1940.

Samuel Taylor,
Referee.

Def. 1
Def. 2